



October 28, 2009

**VIA ELECTRONIC FILING**

Honorable Michael A. Shipp  
U.S. Magistrate, United States District Court  
Martin Luther King Building & US Courthouse  
50 Walnut Street  
Newark, NJ 07102

Re: Walsh Securities, Inc. v. Cristo Property Management, et al.  
United States District for the District of New Jersey  
Civil Action No. 97-3496 (DRD)

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Dear Judge Shipp:

We represent the defendant Commonwealth Land Title Insurance Company in this case. I write about a motion filed by co-defendants National Home Funding, Inc. and Robert Skowrenski, II which seeks in part to dismiss all claims against Mr. Skowrenski and against National Home Funding, Inc. (Document No. 359 electronically filed on 10/26/09). I believe that this motion is surely dispositive. In fact, it relies upon affidavits of Mr. Skowrenski and of his prior attorney as well as numerous documents attached to those affidavits. Insofar as it relies upon extensive factual information not set forth in any pleading, the motion surely is not a motion to dismiss pursuant to Rule 12(b)(6).

On August 24, 2009 Your Honor entered a Scheduling Order (Document No. 331 electronically filed on 08/25/09). Paragraph 9 of that Scheduling Order is the standard provision concerning dispositive motions used in this District, and provides:

"9. **Motion Practice.** Dispositive motions shall only be filed after depositions have been completed. No motions are to be filed without prior written permission from this Court. All dispositive motions must first be the subject of a dispositive motion pre-hearing. These pre-requisites must be met before any motions are filed and the motions will be returned if not met. All calendar or dispositive motions, if permitted, shall comply with the federal and local rules."

The Court has not granted written permission for the filing of the motion and has not been the subject of a dispositive motion pre-hearing. I recognize that at an earlier proceeding when a similar motion was informally sent to Your Honor I pointed out that it was a dispositive motion that would need to be decided by the District Judge. However, at that time there was no discussion whether it was appropriate for the

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filing of a dispositive motion, and the Court did not grant written permission for the filing of a dispositive motion.

As Your Honor is aware, no depositions have taken place in this case. In particular, Mr. Skowrenski has not been deposed in the case. Against this background, it is a safe bet that part of the opposition of some party to the motion will be that Mr. Skowrenski has not yet been deposed in the case, which I believe will result in a denial of the motion on that grounds alone. In short, the motion in question is not at all "ripe" for disposition, and if it is allowed to be considered by the District Judge I believe it will unnecessarily cause the District Judge to spend time dealing with a motion that is not "ripe" and will be denied because depositions have not been taken in the case, and in particular Mr. Skowrenski has not been deposed.

Accordingly, we request that the Court enter an Order that the pending motion filed by Mr. Skowrenski and by National Home Funding (Document No. 359) be deemed withdrawn, and that no further dispositive motions be filed by those parties unless they comply with the provisions of Paragraph 9 of Your Honor's August 24, 2009 Scheduling Order. In that regard, I am enclosing a proposed Order Deeming the Motion to Enforce Settlements and Dismiss all Claims Against Robert Skowrenski, II and National Home Funding, Inc. and for Other Relief as Being Withdrawn.

Respectfully submitted,



David R. Kott

DRK/srv  
Enclosure

cc: Vincent P. Manning, Esq. (w/enc., via fax and regular mail)  
All counsel and other entities on attached Service List (w/enc., via regular mail)

**SERVICE LIST**

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**CIVIL ACTION NO. 97-3496 (DRD)**

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